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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,258	10/11/2003	Donald S. Reichler	2500-040	1734

27820 7590 05/05/2005

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EXAMINER

RAYMOND, EDWARD

ART UNIT	PAPER NUMBER
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2857

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/684,258	REICHLER ET AL.	
	Examiner	Art Unit	
	Edward Raymond	2857	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-37, 39, 40 and 42 is/are pending in the application.
- 4a) Of the above claim(s) 1-18, 37 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 19, 20, 26-33, 40 and 42 is/are rejected.
- 7) ☐ Claim(s) 21-25 and 34-36 is/are objected to.
- 8) ☒ Claim(s) 1-18, 37 and 39 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>20041105, 20050309</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. **Claims 1-18, 37, and 39**, drawn to a method of determining the dispensing efficiency, classified in class 222, subclass 639.
- II. **Claims 19-36, 40, and 42**, drawn to flow rate monitoring system, classified in class 702, subclass 182.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the method of determining the dispensing efficiency can be used in a beverage dispensing unit, as compared to a fuel dispenser.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Steven N. Terranova on April 29, 2005 a provisional election was made without traverse to prosecute the invention of Group II, claims 19-36, 40, and 42. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-18, 37, and 38 are withdrawn from further

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consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

6. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to

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consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. **Claims 19, 20, and 26-33, 40, and 42** are rejected under 35 U.S.C. 103(a) as being unpatentable over McSpadden in view of Hart et al.

McSpadden teaches a flow rate monitoring system, comprising a fuel dispenser comprising a dispensing point and a meter that measures a volume of fuel dispensed at the dispensing point during a dispensing event wherein the fuel dispenser generates dispensing events (Claims 19, 30, and 40: see col. 3, lines 50-58); and a control system coupled to the meter to receive data regarding the volume of fuel dispensed at the dispensing point and receive the dispensing events to determine a time over which the volume of fuel was dispensed to formulate a volume and time pair measurement for a dispensing event (Claims 19, 30, and 40: see col. 4, lines 22-40); the control system adapted to determine a plurality of the volume and time pair measurements for a plurality of dispensing events at a dispensing point (Claims 19, 30, and 40: see col. 4, lines 48-51).

McSpadden teach a system wherein the slope is an estimate of the maximum possible flow rate of the dispensing point (Claims 20 and 42: see col. 4, lines 31-47: The Examiner notes that the rate of change is equivalent to a slope).

McSpadden teach a system wherein the control system is further adapted to compare the maximum dispensing efficiency to a threshold value (Claim 26 and 31: see col. 6, lines 19-31); and generate an error if the maximum dispensing efficiency is less than the threshold value (Claims 26, 27, 29, and 31: see col. 6, lines 30-34).

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McSpadden teach a system wherein the control system generates the alarm by sending an alarm message over an off-site communication link (Claims 28, 33, and 33: see col. 3, lines 13-35: The Examiner notes that the memory can be remote and all known computer systems communicate with a communication link)

McSpadden does not teach the control system adapted to determine a maximum dispensing efficiency. Hart et al. teach using a slope to determine a maximum dispensing efficiency curve (Claims 19, 30, and 40: see paragraphs 47, 49, and Figure 3). It would have been obvious to the person having ordinary skill in the art at the time the invention was made to modify McSpadden to teach using a slope to determine a efficiency curve, as taught by Hart et al., since this would allow for a way to monitor the integrity of the dispenser.

Allowable Subject Matter

10. **Claims 21-25 and 34-36** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Contact Information

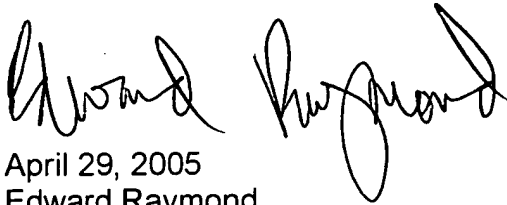
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Raymond whose telephone number is 571-272-2221. The examiner can normally be reached on Monday through alternating Friday between 8:00 AM and 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone numbers for

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the organization where this application or proceeding is assigned are 571-273-2221 for regular communications and 571-272-1562 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1782.

A handwritten signature in black ink, appearing to read "Edward Raymond", is written over the typed name.

April 29, 2005
Edward Raymond
Patent Examiner
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